

# EXHIBIT B

MARK BROWN  
December 15, 2020

1

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## 1 UNITED STATES DISTRICT COURT

## 2 NORTHERN DISTRICT OF CALIFORNIA

4 - - - - - X

5 THERESA SWEET, et al., on :  
6 behalf of themselves and all : Case No.:  
7 others similarly situated, : 19-cv-03674-WHA

8 Plaintiffs, :

9 vs. :

10 ELISABETH DEVOS, in her :  
11 official capacity as :  
12 Secretary of the United :  
13 States Department of :  
14 Education, et al., :

15 Defendants. :

16 - - - - - X

17  
18 Remote Videotaped Deposition of MARK BROWN

19 Tuesday, December 15, 2020

20 10:03 a.m. (EST)

21  
22 Job No. 332249

23  
24 Pages: 1 - 250

25 Reported by: Dana C. Ryan, RPR, CRR

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34 to 37

<p>1 because things could go around for, you know,      2 different parts of the organization, so I -- I      3 won't say that none of the other organizations      4 work with the borrower defense unit. I can only      5 say that they report to Robin Minor.</p> <p>6 Q Okay. The BDU reports to Robin Minor?</p> <p>7 A That's correct.</p> <p>8 Q You say here -- we've talked about this      9 a bit. You say here, Federal Student Aid is an      10 apolitical, performance-based organization.</p> <p>11 Could you tell me a little bit more      12 about what that means?</p> <p>13 A That means that we go across -- we      14 don't change in or out based on political      15 appointments; that we go across administrations.      16 Much like the careers of public servants, we -- we      17 don't attribute or work toward any political end.      18 We work toward the execution of whatever      19 legislation and authorities that we are given      20 without regard to political affiliations.</p> <p>21 Q Okay. And on that subject, how is your      22 compensation related to your performance?</p> <p>23 MR. HANCOCK: Objection: exceeds the      24 scope of the court-ordered discovery.</p> <p>25 BY MS. TORCHIANA:</p>	<p>Page 34</p> <p>1 A When I started at Federal Student Aid?      2 Q Well, as COO.      3 A As COO?      4 Q Uh-huh.      5 A When I started at Federal Student Aid      6 as COO, I was not clear on what the goals and      7 objectives of Federal Student Aid was at the time,      8 so I couldn't -- if you were to ask me what were      9 they -- which I think you're asking me what were      10 the goals and objectives of Federal Student Aid in      11 March of 2019, I was not given a set of goals and      12 objectives in March of 2019.</p> <p>13 Q Okay. So when you started -- so when      14 you started, it was not clear to you that FSA had      15 any goals?</p> <p>16 A That's not what I said. No, what I --      17 I thought what you said was what were the goals      18 presented to me when I started at my job as the      19 chief operating officer at Federal Student Aid.</p> <p>20 Is that your question or --</p> <p>21 Q Yes. What were the goals and      22 priorities that were presented to you that FSA      23 had?</p> <p>24 A So my answer is that there were no      25 goals or priorities presented to me when I started</p>
<p>1 Q Okay. How does your compensation      2 related to processing borrower defense claims?</p> <p>3 MR. HANCOCK: Objection: exceeds the      4 scope of the court-ordered discovery.</p> <p>5 BY MS. TORCHIANA:</p> <p>6 Q You can still answer unless your      7 counsel instructs you not to.</p> <p>8 MR. HANCOCK: The witness may answer.</p> <p>9 THE WITNESS: I'm sorry. I couldn't      10 hear the counsel. Say that again?</p> <p>11 MR. HANCOCK: The witness may answer.</p> <p>12 THE WITNESS: How does my -- could you      13 repeat the question again? I'm sorry. I got      14 caught up in the --</p> <p>15 BY MS. TORCHIANA:</p> <p>16 Q I said how -- how is your compensation      17 related to processing borrower defense      18 applications?</p> <p>19 A Well, my compensation is not related to      20 processing borrower defense applications. I'm      21 a -- I'm a -- there is no relationship that I'm      22 aware of.</p> <p>23 Q Okay. And when you started at FSA in      24 March 2018 -- 2019, sorry, what were your      25 understandings of the goals and priorities of FSA?</p>	<p>Page 35</p> <p>1 the job as chief operating officer of Federal      2 Student Aid. I -- I read the strategic plans of      3 Federal Student Aid to -- to learn what the -- the      4 goals and objectives had been across several years      5 and found them to be broad.</p> <p>6 Q Okay. And did you -- when you started,      7 did you meet with anyone, you know, for example,      8 who onboarded you and explained to you the      9 direction that FSA wanted to go in?</p> <p>10 A So I did not go through a formal      11 onboarding process at Federal Student Aid. My --      12 I simply started in March of 2019 and onboarding      13 of myself.</p> <p>14 Q Okay. And what did you see as the      15 goals and priorities of FSA?</p> <p>16 A I -- I believe we needed -- broadly, we      17 needed to be a student center and responsive, and      18 we needed to deliver on a large transformational      19 objective which was called the next generation of      20 Federal Student Aid.</p> <p>21 Q Okay. And when you joined, did you      22 know that the Department of Education had not      23 issued any borrower defense decisions since      24 June 2018?</p> <p>25 A I knew what I had read in the media. I</p>

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<p style="text-align: right;">Page 46</p> <p>1 A I -- I don't know. As I said earlier, 2 I would classify it as confusion because I -- I 3 don't know why they -- why they thought that.</p> <p>4 Q Okay. So was the stoppage a concern 5 when you joined or, you know, you . . .</p> <p>6 MR. HANCOCK: Objection. Potentially 7 calls for deliberative information.</p> <p>8 MS. TORCHIANA: The witness can still 9 answer.</p> <p>10 THE WITNESS: I was just trying to make 11 sure I understood your question. I didn't know if 12 you were through with your question. You said was 13 this guidance a concern. For -- for me when I 14 started?</p> <p>15 BY MS. TORCHIANA:</p> <p>16 Q When you started, was it a concern that 17 no decisions had been issued?</p> <p>18 A When I started, the overall backlog in 19 production, borrower defense processes and system 20 were a concern to me because of -- of -- as I said 21 earlier, the sheer volume and the fact that they 22 were not moving.</p> <p>23 And, so, not just -- not just the fact 24 that the decisions weren't going out, but that the 25 methodology and other things needed to be known so</p>	<p style="text-align: right;">Page 48</p> <p>1 borrower defense cases would be -- would be 2 managed by. That's when I use the term "fix it." 3 To answer your question, that's what I mean, 4 getting those -- getting those things in place so 5 that this process could start moving.</p> <p>6 Q Okay. And do you know -- we'll discuss 7 this more later, but do you know -- had there been 8 any staff requests for the BDU before you joined?</p> <p>9 A I -- I actually don't know if there had 10 been more staff requests for BDU before I joined 11 because I would not have necessarily seen those.</p> <p>12 Q Okay. And how many -- how many staff 13 people were working at the BDU when you joined? 14 Do you remember?</p> <p>15 A I -- I don't know precisely, but it 16 was -- in terms of attorneys, I would say probably 17 10 to 12 at the most.</p> <p>18 Q Okay. And how many staff people did 19 you estimate were needed to clear the backlog?</p> <p>20 A So estimate being the correct term, 21 I -- I did not estimate. I -- I went to the 22 borrower defense team and worked with them to see 23 what they thought they needed based on the -- 24 based on the caseload. I can't tell you about 25 their internal workings. I don't -- I don't know</p>
<p style="text-align: right;">Page 47</p> <p>1 that we could move on with the cases.</p> <p>2 So I would -- I would say borrower 3 defense as a whole was a concern for me when I 4 started in March of 2019.</p> <p>5 Q Okay. And did you take any -- what 6 steps did you take about the backlog when you 7 started?</p> <p>8 A Specifically, and through -- through 9 the deliberation with the team, I concluded that 10 we needed more people. Specifically, we needed 11 more attorneys and we needed more financial 12 resources if we were to fix the systems that -- 13 that manage, collect, case management systems that 14 support the team. And, so, as the operating 15 officer, I went about focusing on -- on that and 16 fixed it in the next several months.</p> <p>17 Q Okay. So when you say "fixed it," what 18 do you mean?</p> <p>19 A Hire attorneys, recruit, hire, bring on 20 board attorneys so that there would be more hands 21 doing the work.</p> <p>22 Q Okay. And do you know --</p> <p>23 A Secure the financial resources -- 24 secure the financial resources necessary to 25 upgrade and fix the systems that those -- that</p>	<p style="text-align: right;">Page 49</p> <p>1 that, but collectively I do know we came out to a 2 number of something around 60 -- we needed 3 somewhere in that amount of attorneys in order to 4 have people to adjudicate what was a growing 5 backlog of cases, but I don't know how much -- I 6 could not tell you today that that was some 7 scientific equation. I can tell you it was the 8 internal workers of BD team as you would go to 9 your experts and ask about what do we need to -- 10 to tackle this issue.</p> <p>11 Q Okay. And did you make any requests to 12 hire more staff for the BDU?</p> <p>13 A I did.</p> <p>14 Q Okay. And when -- when was the 15 first -- or just how many times did you make -- 16 did you request?</p> <p>17 A I don't know. I don't know how many 18 times I -- I made a request. I just know that my 19 request was approved. I believe it was approved 20 the first time I asked, so I don't know that there 21 were more than one -- there was more than one time 22 that I had to ask.</p> <p>23 Q And when was the first time you asked?</p> <p>24 A Shortly after taking over, but I -- but 25 I can't tell you the exact time, but it was</p>

<p>1 shortly after taking over, shortly after I had 2 been educated on the process of borrower defense 3 and -- and what we needed.</p> <p>4 Q Okay. And who -- who did you -- when 5 you made a request to hire more staff, who did you 6 make that request to?</p> <p>7 A I -- I made it through our HR system. 8 I made it verbally to the under secretary, and I 9 made it to the secretary verbally. And that's 10 what I'm calling the request. In other words, it 11 was all the same one; right? I was verbally 12 saying I would like to hire more people in order 13 to address the backlog.</p> <p>14 Q And do you have an estimate -- I know 15 you said you don't remember, but do you have a 16 rough estimate of when that was?</p> <p>17 A I do not other than what I just said, 18 which is shortly after I took over.</p> <p>19 Q Okay. So sometime in the spring of 20 2019?</p> <p>21 A Yes, and -- and I would just emphasize 22 that that's rough. I don't have a -- I can't -- I 23 can't tell you the exact -- I can't tell you the 24 exact time. I just simply don't recall that exact 25 time.</p>	<p>Page 50</p> <p>1 budget, and that normally drives hiring practices, 2 but I don't know what the decisions were prior to 3 March 2019.</p> <p>4 Q Okay. And do you know if there had 5 been any requests for more staff?</p> <p>6 A I -- I do not know. I would have no 7 firsthand knowledge of that. I'd only started 8 working with issues related to borrower defense 9 March of 2019. Prior to that, I did not have any 10 relationship with the borrower defense unit.</p> <p>11 Q Okay. Before, when you were a senior 12 advisor and working on human capital management 13 which started in October of 2018, did you have 14 any -- any work relating to hiring for the BDU?</p> <p>15 A Again, I was dealing with the speed at 16 which we hire, not -- and there's a nuanced 17 difference here, I think, in your question and 18 what I did. My job is about process improvement. 19 Why does it take long -- too long to hire a person 20 into -- why did it take too long to recruit them 21 or go find an expertise. I wasn't dealing with 22 this section or that section, use this person or 23 that person. I was looking to implement the 24 processing improving, and I don't remember any 25 conversations specifically about borrower defense.</p>
<p>1 Q Okay. And when you made those 2 requests, how did -- for instance, how did the 3 secretary respond?</p> <p>4 MR. HANCOCK: Objection: calls for 5 deliberative information.</p> <p>6 MS. TORCHIANA: Are you instructing the 7 witness not to answer or --</p> <p>8 MR. HANCOCK: I am.</p> <p>9 MS. TORCHIANA: Okay.</p> <p>10 BY MS. TORCHIANA:</p> <p>11 Q Okay. And, generally, how -- when you 12 made those requests, what was the response?</p> <p>13 A Yes.</p> <p>14 Q Okay. And do you know before -- you 15 said you don't remember, but what was your 16 understanding of why -- why there wasn't more 17 staff at the BDU?</p> <p>18 A I -- I didn't have an understanding of 19 why. You know, historically, I just wouldn't -- I 20 don't know. I wasn't -- you know, the borrower 21 defense unit is several years old. They precede 22 me by several years, and I just don't know what 23 the -- you know, what all the deliberations were.</p> <p>24 I think, as with most federal agencies, 25 you make decisions on resources and dollars and</p>	<p>Page 51</p> <p>1 Q Okay. So when you were a senior 2 advisor before you were COO, you hadn't heard of 3 any issues with staffing the borrower defense 4 unit?</p> <p>5 A I don't -- I don't recall any 6 discussions about borrower defense group with me, 7 at least, before I became COO. Our -- our 8 questions were about the process, as I just said, 9 that's required for hiring, the process.</p> <p>10 Q So if you could turn to -- still in 11 tab 25, if you could turn to paragraph 4 of your 12 declaration.</p> <p>13 It says, Among FSA's responsibilities 14 is to make decisions on applications.</p> <p>15 Could you tell me a bit about what that 16 means in terms of your -- your role?</p> <p>17 A One -- one minute, please, if I could 18 read it.</p> <p>19 (Witness reviews document.)</p> <p>20 So if -- if I could just make sure I 21 understand your question, what that means as it 22 pertains to my role as the chief operating 23 officer?</p> <p>24 Q Uh-huh. Yes.</p> <p>25 A So the responsibilities of Federal</p>

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<p style="text-align: right;">Page 78</p> <p>1 heard of who instructed BDU to stop developing 2 these memoranda?</p> <p>3 MR. HANCOCK: Objection: calls for 4 speculation.</p> <p>5 THE WITNESS: I don't know, ma'am.</p> <p>6 BY MS. TORCHIANA:</p> <p>7 Q Okay. And did you ever hear of this 8 decision or learn of it?</p> <p>9 A So in -- I -- I would not -- ma'am, I 10 would not be able to tell you what -- you know, 11 what was -- what was told in 2017. I -- I was not 12 a part of the Department of Education in 2017.</p> <p>13 Q Okay. Okay. We can move on, then.</p> <p>14 If you could turn to Exhibit 7 in your 15 hard copies.</p> <p>16 (Exhibit 7 referred to.)</p> <p>17 THE WITNESS: It says it's -- yes, 18 Exhibit 7.</p> <p>19 BY MS. TORCHIANA:</p> <p>20 Q And are you familiar with this 21 document?</p> <p>22 A (Witness reviews document.)</p> <p>23 I'm not familiar with the front part of 24 this memorandum at -- at all, the letter. But I 25 am aware of the secretary's signature on the back</p>	<p style="text-align: right;">Page 80</p> <p>1 A Not -- not to me, no. I -- I have 2 the -- no, I can't think of anything that would be 3 considered displeasure or -- if that's your 4 question.</p> <p>5 Q Okay. Okay. And, you know, to get 6 back to some general questions not about this 7 document specifically -- we'll get back to it 8 after.</p> <p>9 But before -- just turning back to 10 something you've said, before you mentioned -- 11 when we were talking about performance metrics for 12 the BDU, do you remember a couple of moments ago, 13 how -- how do you assess -- you said you -- you 14 installed performance metrics and, you know, 15 you -- you were trying to install metrics at the 16 department.</p> <p>17 How do you measure the output of the 18 BDU unit?</p> <p>19 MR. HANCOCK: Objection: misstates 20 testimony.</p> <p>21 BY MS. TORCHIANA:</p> <p>22 Q Okay. How do you -- do you assess the 23 output of the BDU unit?</p> <p>24 A So with -- with all of Federal Student 25 Aid metrics, they normally are production</p>
<p style="text-align: right;">Page 79</p> <p>1 that says "with extreme displeasure" because it 2 was a -- it was a matter of a media article that I 3 read.</p> <p>4 So that's my knowledge of this 5 document.</p> <p>6 Q Okay. And what do you take that to 7 mean, her -- her comment?</p> <p>8 MR. HANCOCK: Objection: exceeds the 9 scope of the court-ordered discovery.</p> <p>10 BY MS. TORCHIANA:</p> <p>11 Q You can still answer.</p> <p>12 A I don't -- I don't know other than -- I 13 read it in a media article. I don't know -- I 14 don't know that -- I don't know.</p> <p>15 Q Okay. Do you know what -- what caused 16 her extreme displeasure?</p> <p>17 A So I -- I think this was signed in 18 2017, and -- and I was not a part of the 19 Department of Education then, so, no, ma'am, I 20 wasn't a part of this. I don't know.</p> <p>21 Q Okay. And when you -- since you've 22 started, has the secretary expressed any 23 displeasure with any aspects of the BDU's work?</p> <p>24 A With any aspects of the BDU work?</p> <p>25 Q Yes.</p>	<p style="text-align: right;">Page 81</p> <p>1 oriented. How many have -- so we are a 2 performance-based organization, so we're a 3 production organization.</p> <p>4 And, so, we routinely look at input, 5 output and quality, and that would be the same for 6 the BDU -- the BDU unit.</p> <p>7 Q Okay. And how do you assess the input 8 and the output and the quality of the BDU unit's 9 work?</p> <p>10 A So keeping in mind that -- I can just 11 tell you generically, I'm not a borrower defense 12 unit expert. What I can -- what I can tell you is 13 that we look at how many claims that we have in 14 and how many claims we have adjudicated either 15 positively or -- or negatively or approved or 16 disapproved, and at -- and how we're doing at the 17 overall process of -- of getting those answers 18 to -- to the students.</p> <p>19 So all of those elements of it would -- 20 would be at the macro level how the BDU unit is 21 doing.</p> <p>22 Q Okay. And, so, when you came up with 23 the fiscal year 2020 -- not you, but when the 24 performance metric was set, did you have to 25 approve it or sign off on it?</p>

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<p style="text-align: right;">Page 82</p> <p>A I signed off on all of the -- all of the metrics that go into the strategic plan and the annual plan, one of which is the metric. And in signing, I denote my confidence in the process of the development of those things.</p> <p>Q Okay. So would you ever agree to a performance metric that wasn't reasonable or that you think wasn't attainable?</p> <p>A So when I look at a performance metric in general, I look to see if we provided the resources necessary to achieve it. And if we provided the resources necessary to achieve it, then, you know, I would feel comfortable that it was reasonable.</p> <p>But you asked me if I would ever sign off on a performance metric that is not reasonable; am I -- am I correct?</p> <p>Q Yes.</p> <p>A I would not knowingly do so; however, I am not beyond flaw and -- and we have a large organization, and as I've said, they all have metrics. I have to build and trust the process that it would not bring me an unachievable metric, and so -- but it is not without flaw.</p> <p>So there -- there could be one that</p>	<p style="text-align: right;">Page 84</p> <p>Q Okay. And, so, when BDU came up with its performance metric, what deliberations did you have with the BDU? Did you meet with them about the performance metrics?</p> <p>MR. HANCOCK: Objection: calls for deliberative privileged information. I instruct the witness not to answer.</p> <p>BY MS. TORCHIANA:</p> <p>Q Okay. And how -- when you signed off on the performance metrics, how did you come to understand that that was an achievable goal? What told you that?</p> <p>A So what -- so if -- what told me that the goals were achievable?</p> <p>Q Uh-huh. Yes.</p> <p>A From my level -- and I have to explain this a little bit, though -- but from my level, I'm more concerned that the process is in place for the voices to be heard and the development to occur. And, so, I am spending my time on the process; in other words, are they from the ground up. Do subject matter experts have an opportunity to say something; are we, you know, not listening to any voices; or how do they look on a historical basis.</p>
<p style="text-align: right;">Page 83</p> <p>would have to be changed or adjusted if it were not -- if it were found to be, I think as you said, unrealistic.</p> <p>Q Okay. And how did you inform yourself that the BDU -- BDU unit's metrics were achievable or attainable?</p> <p>MR. HANCOCK: Objection: vague; and potentially calls for deliberative information.</p> <p>BY MS. TORCHIANA:</p> <p>Q You can still answer.</p> <p>A So we have metrics updates as I was -- as I was saying, and -- and -- and a process by which they are developed. So the way I inform myself in general is by listening and having dialogue and asking questions that I think are challenging that would make those who develop and think deeply about them and looking at, you know, their responses and the history and seeing if together we can agree that this is something that can be done. And then ultimately they are established that way.</p> <p>So I -- I know that's not a one, two, three answer, but neither is the process. It is a very deliberative back-and-forth process that leads to what you are calling the metrics.</p>	<p style="text-align: right;">Page 85</p> <p>Those kinds of questions when you manage a large organization, you have to become confident that those will help bring out the best in those you manage.</p> <p>And, so, the way -- the reason I'm confident is because I spend an intense amount of time on the process to make sure the process is in place to deliver that. I don't -- I'm not a borrower defense attorney. I don't -- I can't tell you perhaps the intricacies that you're looking for in terms of all of those things that happen inside of the borrower defense unit, but I can tell you what process I had used.</p> <p>Q And who told you about the processes at the BDU?</p> <p>A Who told me about how borrower defense unit processes the work? Is that your question, ma'am?</p> <p>Q Sure.</p> <p>Well, you said you were listening to -- when you set the performance metrics you were listening to different voices and it's a deliberative process.</p> <p>Who were you deliberating with to set those numbers?</p>

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<p>1                          Page 90  2        guess you would put it in a broad -- broad  3        category of recruiting and -- and hiring. That's  4        what we went about doing in a very aggressive way.  5                          Q        Okay. And when did that start or when  6        did you start doing that?  7                          A        Again, I don't know when the very first  8        hiring fair was and when the very first -- I -- I  9        didn't -- I don't conduct the hiring fair myself.  10      I don't physically go. I tell our experts to do  11      that and I know that they had them. I don't  12      actually go to the law school and visit and try  13      and -- you know, we send -- we send people who are  14      attorneys who know the business to go do that.  15                          I can tell you that shortly after my  16      arrival, we began to try and buildup the number of  17      attorneys after we were -- were given the approval  18      to do so as I said earlier, and then all of those  19      actions began to take place. It wasn't an  20      overnight thing. It was -- as you would expect,  21      you get ten, you get five more, you get seven  22      more, you know, until you build up your personnel.  23                          Q        And would you say before you joined,  24      were there enough attorneys in the BDU unit?  25                          A        So while I would not talk about --                                  because I don't know because enough is -- enough </p>	<p>1        been issued since June 2018?  2                          MR. HANCOCK: Objection: asked and  3        answered.  4                          THE WITNESS: I think --  5                          BY MS. TORCHIANA:  6                          Q        You can answer.  7                          A        Yeah, I think as I said before, I  8        believe there was confusion, and so it -- my -- my  9        understanding was that there was confusion.  10      That's -- that's how I would classify it.  11      Q        Confusion about what?  12      A        The borrower defense unit believed that  13      they had guidance to -- to not do so, policy  14      guidance not -- not to do so, and had not done so  15      after the Manriquez case, and I'm not certain that  16      the -- at the time that the -- the department was  17      under the understanding that they had provided  18      that guidance.  19                          So if you're asking about that time  20      frame when I initially took over in -- in March, I  21      would classify it as confusion.  22                          Q        Okay. So just looking at Exhibit 10,  23      are you familiar with this testimony by Diane Auer  24      Jones?  25                          A        I am not familiar with this particular </p>
<p>1                          Page 91  2        would have to do with how many cases you had at  3        the time, so I can't talk to you, ma'am, about  4        anything prior to March 2019. I really don't know  5        what -- I can tell you that, as I have said  6        earlier, there were around 10 or 12 when I started  7        in March of 2019. And that was not enough for the  8        number of cases we had to get adjudicated and  9        worked, and therefore we did all those things that  10      I was just going through earlier.  11                          Q        Okay. And did you -- did you have any  12      sense of whether there were any requests to hire  13      more attorneys before you joined?  14                          A        As I said earlier, I -- I really don't  15      know. I don't know.  16                          Q        Okay. Okay. All right.  17      We'll talk about the IT platform more  18      later. I'd now like you to go to Exhibit 10.  19                          (Exhibit 10 referred to.)  20                          THE WITNESS: Yes, ma'am.  21                          BY MS. TORCHIANA:  22                          Q        Okay. And just before we get into  23      that, so when you started in March 2019, it sounds  24      to me like that you made your issues -- or --  25      or -- I guess when you started in March 2019, what                                  was your understanding of why no decisions had </p>	<p>1        testimony. I know that Ms. Jones provided  2        testimony, but I have not read this document that  3        is -- that you have here as Exhibit 10.  4                          Q        So it was in -- on May 22nd, 2019, so  5        after you joined. Have you ever read through her  6        testimony or looked at it?  7                          A        I -- I don't believe so. At least I  8        don't recall reading through this one.  9                          Q        Okay. And at the top, could you turn  10      to page 50?  11                          A        Uh-huh.  12                          Q        Okay. And at the top, could you read  13      the testimony that starts -- so Ms. Jones says,  14      There is not a policy. Could you read that  15      sentence?  16                          A        There is not a policy that prevents the  17      review of claims. However, we are not able to  18      determine the level of harm or the level of relief  19      that a borrower should get because the methodology  20      we use is now being challenged by the California  21      courts. So we continue to process.  22                          Q        Okay. And could you tell me what you  23      think this means or explain that statement?  24                          MR. HANCOCK: Objection: Speculative.  25                          BY MS. TORCHIANA: </p>

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<p>1 Ms. Jones was using the term because, as I said 2 earlier, how someone uses the term, I think, 3 differs.</p> <p>4 So I -- I can't tell you how Ms. Jones 5 was using the term.</p> <p>6 Q Okay. And when you joined the 7 department and, you know, no decisions had been 8 made since June 2018, did you understand whether 9 either Step 1 eligibility determinations -- were 10 any of those proceeding?</p> <p>11 A Could you -- would you mind repeating 12 the -- the last part of that question?</p> <p>13 Q When you started in March 2019 and 14 going forward, did -- no decisions had been issued 15 since June 2018, did you understand whether any 16 Step 1 decisions were continuing, so as you 17 described it, eligibility?</p> <p>18 A Step 1, to my knowledge, never stopped.</p> <p>19 Q Okay.</p> <p>20 A Those -- that part which we now call 21 Step 1, we're talking about it as Step 1, to my 22 knowledge that had never stopped.</p> <p>23 Q Okay. And -- and how -- was that being 24 reported to you?</p> <p>25 A So the metrics and the measurements and</p>	<p>1 claims. However, we -- we're not able to 2 adjudicate as many as we would like because we 3 don't have enough resources.</p> <p>4 And, so, when you say how do I know it 5 was continuing, they -- they told me that they 6 were continuing to adjudicate claims. That didn't 7 automatically get boiled down to a metric that I 8 was getting automatic weekly updates on. It took 9 a while, some time for that to come about. And I 10 don't know exactly when that came about, but it 11 didn't happen immediately.</p> <p>12 But that's -- that's how I knew that 13 that's what we were doing.</p> <p>14 Q Okay. And as part of your performance 15 metrics, so you -- do you know how many claims 16 have gone through Step 1 eligibility or have been 17 processed at Step 1?</p> <p>18 Was that ever reported?</p> <p>19 A Today you mean or --</p> <p>20 Q At any point.</p> <p>21 A So, yes, at some -- at some point 22 across during the process of metric building and 23 measurements, I would have an indication of how 24 many claims had been processed and adjudicated and 25 if we were at a point where notifications were</p>
<p>1 all the things that we've been talking about 2 didn't exist on day one in March to my knowledge, 3 and -- and nothing was being reported to me other 4 than I was aware that we only had 10 to 12 5 attorneys, as I said before, and the numbers were 6 not that large of the number of claims we were 7 able to even get through Step 1 because BD claims 8 were growing, and as I've said earlier, we simply 9 did not have enough of those two things I 10 mentioned, attorneys and the resources against the 11 systems necessary.</p> <p>12 Q Okay. And so how did you know that 13 Step 1 was continuing?</p> <p>14 A So in March I started an education --</p> <p>15 Q Not just in March, but, you know, when 16 you started and moving forward.</p> <p>17 How about from March when you started 18 until December of 2019?</p> <p>19 A How did I -- how did I know that Step 1 20 was continuing?</p> <p>21 Q Uh-huh. Yes.</p> <p>22 A So -- and I know -- I believe I 23 mentioned that when I first started in March, the 24 BD team immersed me into what they were doing. 25 And, so, part of that is we are adjudicating</p>	<p>1 going out, how many notifications had been sent. 2 That would be a part of the metric.</p> <p>3 Q Okay.</p> <p>4 A Could I ask, ma'am, for a -- a 5 five-minute break?</p> <p>6 Q Sure.</p> <p>7 MR. HANCOCK: And, Claire, this might 8 be a good time to just talk generally about lunch 9 break. It's now 12:43 here on the East Coast, 10 so --</p> <p>11 THE VIDEOGRAPHER: Do you want to have 12 this conversation off the record?</p> <p>13 MR. HANCOCK: Oh, sure.</p> <p>14 THE VIDEOGRAPHER: We're now off the 15 record. The time is 17:43 UTC time. (Lunch recess -- 12:43 p.m.)</p> <p>16 (After lunch recess -- 1:18 p.m.)</p> <p>17 THE VIDEOGRAPHER: Okay. We're now 18 back on the record. The time is 18:18 UTC.</p> <p>19 BY MS. TORCHIANA:</p> <p>20 Q Okay. So, Mr. Brown, we were just 21 talking about the Calvillo or the Manriquez 22 injunction and what you understood the effect of 23 it to be. You mentioned that there was confusion 24 within the BDU unit and the BDU unit believed that</p>

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<p style="text-align: right;">Page 106 Page</p> <p>1 it -- that they couldn't issue any decisions.      2 Do you know -- where would you say --      3 all right. Let me rephrase it.      4 How did you seek clarification about      5 this confusion?</p> <p>6 A So I -- I wouldn't say -- and I      7 don't -- I don't believe I said that there was      8 confusion within the BD unit. I think what I said      9 was that there was confusion, meaning the BD unit      10 believed they had guidance or policy not to go      11 further with decisions, meaning to send them out.      12 When I asked the department if, in      13 fact, that was the case, the answer I got back was      14 that they didn't believe they had told the BD unit      15 that.</p> <p>16 That, it's those two positions early on      17 in my time, that I define as confusion.</p> <p>18 Q Okay. So who did you ask from the      19 Department of Education about -- about this      20 confusion? Who did you talk to?</p> <p>21 A I -- I spoke with Under Secretary Jones      22 to get clarification on what the -- you know, what      23 had been told to the BD unit.</p> <p>24 Q Okay. And what did she tell you?</p> <p>25 A She responded at the time. This is in</p>	<p style="text-align: right;">Page 108 Page</p> <p>1 couldn't issue decisions?      2 A No. No, no, I -- maybe I don't      3 understand -- understand you. Ms. -- I asked the      4 BD unit as we were going through that educational      5 process, you know, what we were doing, why were      6 decisions not going out.</p> <p>7 The BD unit believed that after the      8 Manriquez case decision that they were only to      9 adjudicate cases; they were not to send out any --      10 any answers. They believed that was the guidance      11 that they had.</p> <p>12 I asked --</p> <p>13 Q Did you seek clarify -- did you seek      14 clarification about why they believed that was the      15 guidance that had been issued?</p> <p>16 A Yes. I -- I asked the under secretary      17 why was the BD unit not sending out decisions.      18 The initial answer or response, if you go back,      19 was I didn't know that the BD unit was not sending      20 out decisions. That was the initial answer when I      21 first -- when I first started in March/April time      22 frame looking into this.</p> <p>23 Q Okay. And did you ask anyone in the      24 BDU why they thought they'd received that      25 guidance?</p>
<p style="text-align: right;">Page 107 Page</p> <p>1 the March/April time frame. I didn't know that      2 the BD unit was not sending out -- or I'm not sure      3 why the BD unit is not sending out decisions.      4 That was the initial response, and this was a      5 verbal conversation. I don't have this in -- in      6 any form of documentation.</p> <p>7 Q So she -- she was the one who said to      8 you she wasn't sure why the BDU -- the BDU unit      9 wasn't issuing decisions?</p> <p>10 A Initially.</p> <p>11 Q Okay. And did you seek any      12 clarification?</p> <p>13 A I -- I did. At some point, and I -- I      14 cannot specify for you the exact point because I      15 don't recall the exact point, but at some point it      16 moves to the point of a new methodology was being      17 developed, and once that new methodology was      18 developed, it would allow for the issuance of      19 both -- on -- of decisions, meaning both approval      20 and denials.</p> <p>21 Q Okay. That wasn't quite my question in      22 terms of -- so Ms. Diane Auer Jones told you the      23 BDU unit told you they couldn't issue decisions.      24 Did you seek clarification within the      25 BDU unit asking why they thought that they</p>	<p style="text-align: right;">Page 109 Page</p> <p>1 MR. HANCOCK: Objection: asked and      2 answered.</p> <p>3 BY MS. TORCHIANA:</p> <p>4 Q I think he mentioned -- or you can go      5 ahead and answer.</p> <p>6 A No, it's -- as I had previously stated,      7 the BD unit believed, which I believe gets to your      8 why, that after the Manriquez case decision that      9 they were not to send out any notifications. They      10 were simply to continue adjudicating cases.</p> <p>11 Q And did you talk to anyone in the BDU      12 unit about that belief?</p> <p>13 A I -- no, I don't believe that I -- I      14 didn't go any further into -- any further in the      15 history of it because it was answer right -- the      16 answer is they weren't sending any out because      17 they believed they weren't supposed to at the      18 time.</p> <p>19 Q And, so, did you do anything to clarify      20 that confusion?</p> <p>21 A Yes. I stated earlier I asked the      22 under secretary, and the initial reply I got back      23 was I didn't -- I didn't know the BD unit was not      24 sending out, but that was only the initial reply      25 that I got back.</p>

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<p style="text-align: right;">Page 110 Page</p> <p>1           Later on -- and I can't give you the 2       exact time of this -- it was decided that we would 3       continue that same posture while the new 4       methodology was being developed, and that once the 5       new methodology would be developed, we would be 6       going forward with all types, you know, both the 7       adjudications and the notifications.</p> <p>8           Q    Okay. When did you decide -- when you 9       say you decided to continue that posture, what do 10      you mean?</p> <p>11          A    Not that I decided; that the department 12       at that point decided that we would continue the 13       same posture that we were in and not issue 14       notifications but continue to do adjudications 15       until the point at which the methodology was 16       completed, and then that -- and then we would 17       begin doing both.</p> <p>18          Q    Okay. And who made that decision?</p> <p>19          A    I don't know exactly. I can tell you 20       that that was a decision communicated to me 21       through the under secretary. I don't know that I 22       could tell you, you know, if that was her sole 23       decision or if there was some other parties 24       involved.</p> <p>25                   I would not know that.</p>	<p style="text-align: right;">Page 112 Page</p> <p>1       was developed, I don't -- I don't know. Only I 2       can relate to you what was communicated to me.</p> <p>3           Q    Okay. If you can turn back to your 4       declaration which is -- it should be behind 5       Exhibit 25 -- behind tab 25, sorry.</p> <p>6          A    I have it.</p> <p>7          Q    Okay. And we'll start at -- we'll get 8       back to paragraph 5. So, you know, you say, On 9       December 10th, 2019, the department issued a 10      policy statement setting forth a tiered relief 11      methodology.</p> <p>12                   So who -- who came up with this tiered 13      relief methodology?</p> <p>14          A    Who came up with it?</p> <p>15          Q    Yes.</p> <p>16          A    So what I would -- what I would say is 17       that the -- the methodology itself is determined 18       by the department. In terms of the building of 19       it, if that answers your who that came up with it, 20       I'm sure like most other things, it was collective 21       effort of providing information to help decision 22       makers, but the methodology is a statement of 23       policy of the secretary's, and so it would not be 24       inside of Federal Student Aid.</p> <p>25          Q    Okay. So who would you say was the</p>
<p style="text-align: right;">Page 111 Page</p> <p>1           Q    Okay. And how was that communicated to 2       you?</p> <p>3                   When you say the under secretary 4       communicated that to you, how was that 5       communicated? Was it -- in what form?</p> <p>6          A    Yeah, to -- to my knowledge it was 7       verbal. I don't -- I don't know that there's a 8       document that says effective this date. My 9       recollection of that is just that it was given to 10      me verbally.</p> <p>11          Q    Okay. So would you say there was a 12       policy not to issue any decisions until a new 13       relief methodology was in place?</p> <p>14          A    I don't know if I would go as far as to 15       define it as policy, but I would certainly go far 16       enough to call it a set path going forward.</p> <p>17          Q    Okay. And that guidance was coming 18       from the Office of the Under Secretary?</p> <p>19          MR. HANCOCK: Objection: asked and 20       answered.</p> <p>21          BY MS. TORCHIANA:</p> <p>22          Q    Okay. You can still answer it.</p> <p>23          A    Yeah -- yes, ma'am, as I just -- as I 24       just stated. That's who it was communicated to me 25       from. Exactly where it was coming from and how it</p>	<p style="text-align: right;">Page 113 Page</p> <p>1       main decision maker then in coming up with the 2       tiered relief methodology?</p> <p>3          A    I -- I wouldn't say that because I -- 4       you know, I don't know how to -- I don't know how 5       to measure what you mean by who was the main 6       decision maker. The methodology is a statement of 7       policy, so it comes from the department. And then 8       our job is to execute that -- that policy. Who -- 9       who weighed in the most or the least, I -- or 10      made, to use your term, I -- I don't know that 11      name.</p> <p>12          Q    Okay. And when was it decided to 13       develop on this tiered relief methodology?</p> <p>14          A    I don't know exactly when it was 15       decided. I know that we started using that. I 16       can tell you that. But exactly when it was 17       decided, I -- I don't know.</p> <p>18          Q    Okay. And when you -- let's say in 19       March 2019 when you joined the department, had 20       you -- was there any development of this 21       alternative methodology?</p> <p>22          MR. HANCOCK: Objection: misstates 23       testimony.</p> <p>24          THE WITNESS: I don't know if I 25       understand that question. I'm not sure I</p>

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1 understand your question.  
 2 BY MS. TORCHIANA:  
 3 Q My question was when did this tiered  
 4 methodology start being developed, and you say you  
 5 don't remember. So, you know, in the spring of  
 6 2019 when you started, do you remember any  
 7 discussions about this new tiered relief  
 8 methodology?

9 A I don't.

10 Q Okay. And when do discussions about  
 11 this tiered relief methodology begin?

12 A I don't know when the -- again, I don't  
 13 know when the discussions or the decisions, the  
 14 inner workings of what would be the policy making,  
 15 I can't tell you exactly when that began.

16 What I can -- what I can tell you is  
 17 that in -- in March, I wasn't aware of it if  
 18 that's your -- if that's your question.

19 Q Okay. What about later on, let's  
 20 say -- when did you become aware that a tiered  
 21 methodology was being developed?

22 A So what -- what I know is that as we  
 23 got into the April/May time frame -- and I don't  
 24 remember precisely that time frame, but somewhere  
 25 within there -- the answer to our question of

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1 because it was key to us moving forward in the  
 2 borrower defense.  
 3 Q Okay. And what was your involvement in  
 4 developing this tiered relief methodology?  
 5 A So my personal involvement would have  
 6 been very limited. If you mean "my", the  
 7 organization of Federal Student Aid, I would have  
 8 a slightly different answer.

9 Q When you say it was very limited, what  
 10 did you do as part of developing this tiered  
 11 relief methodology?

12 A Little -- little to nothing. When I  
 13 say very limited, I am -- I'm referring to the  
 14 fact that I'm the chief operating officer at  
 15 Federal Student Aid, so anything that Federal  
 16 Student Aid might provide data for or those kind  
 17 of things, I can't totally detach myself from it  
 18 because they are -- that is my organization.

19 But in terms of my personal  
 20 involvement, that -- that's not what I do. I  
 21 would not have personally been sitting with  
 22 someone developing methodology.

23 Q Okay. And who within FSA was working  
 24 on it?

25 A So while I can't -- I wouldn't be able

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1 moving forward with notification was related to  
 2 the fact that a methodology was being developed.  
 3 But I'm not telling you that it started  
 4 then or it started before then or later because I  
 5 don't know other than at that point I became aware  
 6 that it was being developed. I can't give you  
 7 the -- I can't give you the parameters of when it  
 8 started or when it ended or anything like that  
 9 other than I -- other than I know it was being  
 10 developed.

11 Q Okay. And did you ever discuss the  
 12 development of the tiered relief methodology with  
 13 Diane Auer Jones?

14 A Did I ever discuss that we were -- that  
 15 she was -- that she and the department  
 16 collectively were working on this methodology?

17 Q Yes.

18 A Yes, I -- I knew that they were working  
 19 on it. I -- I did know that. After that time  
 20 frame, after that discussion, I -- I knew that.

21 Q Okay. And how was that communicated to  
 22 you? How -- how -- what form did those  
 23 discussions take?

24 A Just that, discussions in meetings, and  
 25 the reason it was -- would have been discussed is

1 to give you the details of who, I can tell you  
 2 that we have a policy -- the liaison office and we  
 3 have data people who pull data out of systems and  
 4 run algorithms and those kind of things. They  
 5 provide the decision support to the policy makers  
 6 to help them understand kind of the -- the numbers  
 7 and the data and those kind of things that they're  
 8 trying to make decisions on.

9 So I could tell you organizationally we  
 10 have sections that do that. We have data  
 11 analytics; we have data scientists, if you will,  
 12 that do those kinds of things, and policy liaisons  
 13 which do that. And they would have been involved  
 14 with running various programs and pulling data to  
 15 be supportive of that effort.

16 Q Okay. And how many staff within FSA  
 17 would you say were working on developing this  
 18 partial relief methodology?

19 A I would not know. This is a dynamic --  
 20 dynamic kind of thing. You know, today I need one  
 21 person; tomorrow I need two; I need a couple of  
 22 hours on the phone.

23 It's just -- it's very dynamic, and I  
 24 could not associate it with a particular number of  
 25 persons or times, nor do I believe we accounted

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1 for it in any kind of way.

2 So I would not want to speculate. I  
3 don't know, ma'am.

4 Q Okay. Was it time-consuming for FSA to  
5 developed this tiered relief methodology?

6 A So by "time-consuming," do you mean  
7 that we had to put some time into it, or do you  
8 mean that it took an inordinate amount of time?

9 Can you help me understand what you  
10 mean by that?

11 Q Did it take a lot of time for staff  
12 members at FSA to develop this tiered relief  
13 methodology? Was it something that -- how much  
14 time would you say staff spent on developing this?

15 MR. HANCOCK: Objection: misstates  
16 testimony.

17 MS. TORCHIANA: You can still answer.

18 THE WITNESS: Yeah, I wouldn't want to  
19 give you a specific amount of time. I don't know.  
20 I could look back and see if we had written that  
21 down somewhere, but, you know, I couldn't -- I  
22 couldn't tell you exactly how much time was spent  
23 on it, not -- not off the top of my head.

24 BY MS. TORCHIANA:

25 Q Okay. And did you have a sense that it

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1 relief methodology?

2 MR. HANCOCK: Objection: misstates  
3 testimony.

4 THE WITNESS: Could you say it again,  
5 ma'am? I'm sorry. I didn't understand.

6 BY MS. TORCHIANA:

7 Q I said, what resources were required to  
8 develop this methodology within FSA?

9 So you mentioned staff . . .

10 A So we have people that pull out data,  
11 do data analytics and metrics. We have people  
12 who -- who I would call policy liaison folks who  
13 help -- help understand what -- what the policy  
14 (audio distortion) locations of them are. So  
15 within their job jar would be to support this kind  
16 of effort.

17 But if you're asking for me to quantify  
18 it -- or are you asking for me just to give you  
19 those organizational elements within FSA?

20 Q What were the organizational elements  
21 within FSA that were needed?

22 A Data analytics and policy liaison.

23 Q Okay. Could you explain to me how this  
24 partial relief methodology -- how it works?

25 MR. HANCOCK: Objection: exceeds the

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1 was taking a lot of time for FSA to -- to develop  
2 this partial relief methodology?

3 MR. HANCOCK: Objection: misstates  
4 testimony.

5 THE WITNESS: So the methodology is  
6 developed by the department. The methodology is a  
7 statement of policy, and so the -- the role of  
8 FSA, and -- and by association my role, is to  
9 provide data and analytics for the decision  
10 makers. But we don't develop that policy document  
11 which -- which you referred to as a methodology.

12 BY MS. TORCHIANA:

13 Q So within FSA, what staff was working  
14 on developing this methodology?

15 A So, again, I cannot give you names. I  
16 don't know all of the names. I can tell you we  
17 have a policy liaison office and that only has a  
18 couple of people in it. And we have data  
19 analytics, people who pull data. That could have  
20 been one or -- you know, one or two people that  
21 got that request and worked that particular  
22 request, but it would have been a combination of  
23 those kind of folks.

24 Q Okay. And -- and what resources would  
25 you say were required to develop this partial

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1 scope of the court-ordered discovery.

2 BY MS. TORCHIANA:

3 Q Okay. Okay. And then -- what is your  
4 understanding of why loan relief tied to earnings  
5 is a relevant measure, if relevant?

6 A So I would -- would tell you that  
7 that's not something I would have a deep  
8 understanding of. It is -- that's essentially, I  
9 think, the policy that you're reading from of how  
10 the methodology works, and -- and while we do have  
11 technicians that compute it, the how or -- or why  
12 of the policy would not be within my -- kind of my  
13 statement of work.

14 Q Okay. Okay. And then if we could go  
15 to paragraph 6, could you just read the -- the  
16 first sentence for me?

17 A After adoption of the tiered relief  
18 methodology discussed in the policy statement, FSA  
19 resumed issuing decisions on pending borrower  
20 defense claims. If FSA determined that a borrower  
21 had submitted an application which met the  
22 requirements for a borrower defense discharge, FSA  
23 used the methodology described in the policy  
24 statement to determine the amount of relief that  
25 would be provided to the borrower.

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<p style="text-align: right;">Page 170 Page</p> <p>1 here.</p> <p>2 Q Okay. We're going to switch tacks a</p> <p>3 little bit and talk about something you mentioned</p> <p>4 earlier in this declaration. Sorry to keep going</p> <p>5 back and forth, but if you go to paragraph 18, you</p> <p>6 mention that since December 2019, borrower defense</p> <p>7 applicants whose applications are found ineligible</p> <p>8 receive one of four form ineligibility letters.</p> <p>9 Do you know who drafted these form</p> <p>10 ineligibility letters?</p> <p>11 A So the ineligibility letters are -- are</p> <p>12 drafted. Do you mean -- and, again, if I can just</p> <p>13 make sure that I -- that we're using the words the</p> <p>14 same way. So the traditional draft, who is the</p> <p>15 first person that -- that puts the words on a page</p> <p>16 and -- and asks everyone else what they think</p> <p>17 about it.</p> <p>18 That -- drafts would begin in Federal</p> <p>19 Student Aid inside of our borrower defense unit</p> <p>20 and of our folks, drafts would begin there. I'm</p> <p>21 sure they were created there.</p> <p>22 Q Okay. And who would have drafted them?</p> <p>23 A It would have come from our policy</p> <p>24 liaison and borrower defense units.</p> <p>25 Q And who is your policy liaison?</p>	<p style="text-align: right;">Page 172 Page</p> <p>1 if they have a question and they go ask somebody</p> <p>2 that question, it could be anybody in the</p> <p>3 organization, right. They may have to ask is this</p> <p>4 the appropriate line for this or that, and they</p> <p>5 may want to talk to someone on the loan servicing</p> <p>6 side or one on the technical writing side.</p> <p>7 They -- they're working, so they are -- they are</p> <p>8 bringing their files together to produce a draft.</p> <p>9 I couldn't tell you everybody they</p> <p>10 talked to. I'm just saying that it's possible.</p> <p>11 Q And were you involved at all in</p> <p>12 drafting these form ineligibility letters?</p> <p>13 A So when you say "involved," you mean</p> <p>14 that I knew what was going on? That I saw the</p> <p>15 staffing process? Or do you mean that I was</p> <p>16 helping to draft it?</p> <p>17 Q Any and all of those things.</p> <p>18 How were you involved in drafting these</p> <p>19 letters?</p> <p>20 A I was not helping to draft the letter.</p> <p>21 I was not helping to write what words would go on</p> <p>22 the letter. I would not be the right person to do</p> <p>23 that.</p> <p>24 What I -- what I was doing was making</p> <p>25 sure that we had an appropriate staffing process</p>
<p style="text-align: right;">Page 171 Page</p> <p>1 A So it's a team of folks. The -- the</p> <p>2 leader on the -- in the policy liaison area is a</p> <p>3 Mr. Ian Foss, and the leader on the borrower</p> <p>4 defense team I believe is Colleen Nevin.</p> <p>5 And, so, something like preparing what</p> <p>6 words should go on a form, which is preparing a</p> <p>7 draft, would be done collectively between those</p> <p>8 two parts of the organization.</p> <p>9 Q Okay. So would you say Ian Foss helped</p> <p>10 draft these form letters?</p> <p>11 A Yes, that's what I'm saying. These</p> <p>12 letters have been done collaboratively between</p> <p>13 those two units, one providing --</p> <p>14 Q Anybody else?</p> <p>15 A Inside of FSA? I can't say that</p> <p>16 there's no one else, but from an organizational</p> <p>17 perspective, it would be those two parts of the</p> <p>18 organization. It could be several other people</p> <p>19 that are involved that have questions or those</p> <p>20 kind of things, but those two parts of the</p> <p>21 organization would be involved.</p> <p>22 Q Okay. When you say could be several</p> <p>23 other people, who do you think those several other</p> <p>24 people are?</p> <p>25 A So what I'm trying to allude to here is</p>	<p style="text-align: right;">Page 173 Page</p> <p>1 and that the controls were in place to make sure</p> <p>2 the right people saw the letter -- letters before</p> <p>3 they go final.</p> <p>4 I was very well aware of that.</p> <p>5 Q Okay. And who would you say were the</p> <p>6 right people to review those letters before they</p> <p>7 went out?</p> <p>8 A The letters are a statement of policy,</p> <p>9 and -- and so the final letters would have to be</p> <p>10 gone through the policy outline of the Department</p> <p>11 of Education and -- and that might be a general</p> <p>12 counsel review and an ultimate approval through</p> <p>13 the under secretary.</p> <p>14 Q Okay. So could you -- so would that be</p> <p>15 Diane Auer Jones would have reviewed them before</p> <p>16 they went out?</p> <p>17 A Yes, if it was a poll- -- it's the</p> <p>18 policy letter, she or -- now, I don't work inside</p> <p>19 of her office, so she may have protocols</p> <p>20 established where someone else in the office sees</p> <p>21 it. So I could not say it was absolutely her that</p> <p>22 saw every letter.</p> <p>23 I could tell you the Office of the</p> <p>24 Under Secretary would be a part of the staffing</p> <p>25 process.</p>

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<p>1 Q Okay. And what was the process for 2 drafting these letters?</p> <p>3 A Inside of Federal Student Aid?</p> <p>4 Q Yeah.</p> <p>5 A I can -- I can tell you that -- I can 6 tell you the offices that worked to put 7 together -- put together these statements and then 8 put together a staff -- what I would call a staff 9 summary sheet for it to be seen by the relevant 10 parties and sent outside Federal Student Aid. 11 That's -- that's essentially the process.</p> <p>12 So the borrower defense unit, knowing 13 what the law requires in order for a person to 14 come out and come back in with a -- with a claim 15 and then a policy team working to get that on 16 paper and get it approved.</p> <p>17 Q Do you know when that process 18 started -- when the process started for drafting 19 these letters?</p> <p>20 A No, I don't, and I don't believe it's a 21 specific time because there are four letters, and 22 they don't all begin or end at the same time. I 23 think they evolved into -- into having four 24 letters.</p> <p>25 So to answer your questions, no, I</p>	<p>1 of these letters were produced?</p> <p>2 A I do not.</p> <p>3 Q Okay. So if you could turn to 4 Exhibit 13, which has already been marked as 5 Exhibit 13. 6 (Exhibit 13 referred to.)</p> <p>7 BY MS. TORCHIANA:</p> <p>8 Q It will be behind tab 13. If you could 9 turn to the exhibits, the first one is Exhibit A.</p> <p>10 There's a cover page that says Exhibit A?</p> <p>11 A Okay.</p> <p>12 Q So this letter, I can represent to you, 13 is for Corinthian borrowers who assert job 14 placement reclaims that do not meet the 15 eligibility criteria for such a claim. 16 So do you know who prepared this 17 particular letter?</p> <p>18 A I do not.</p> <p>19 Q Okay. And do you know --</p> <p>20 A Regarding an individual. When you say 21 "who," you're meaning an individual; correct?</p> <p>22 Q Or multiple individuals. Which people?</p> <p>23 A So what I -- what I would say, just to 24 be clear, on none of the letters will I be able to 25 tell you what individual put pen to paper and</p>
<p>1 don't believe I could tell you exactly when the 2 process began.</p> <p>3 Q Okay. We'll -- we'll go through each 4 one and you can tell me when you think the 5 drafting of that specific letter began.</p> <p>6 And -- and do you know how -- how long 7 it took to develop these letters?</p> <p>8 A I do not.</p> <p>9 Q Okay. And in terms of who approved 10 them, it sounds like that was Diane Auer Jones?</p> <p>11 A The process --</p> <p>12 Q Is that right?</p> <p>13 A Yeah, what I would -- what I would say, 14 ma'am, is the approval process involves the policy 15 element, people that could review -- could require 16 review from the Office of General Counsel, and for 17 it to go through the Office of the Under 18 Secretary.</p> <p>19 As I stated earlier, I can't tell you 20 their internal protocols, if the under secretary, 21 Diane Jones, approved each particular letter. But 22 I could tell you that the Office of the Under 23 Secretary would have been involved in the approval 24 of those letters.</p> <p>25 Q Do you have a sense of how many drafts</p>	<p>1 Page 175 Page</p> <p>1 drafted the letter, but I can tell you from an 2 organizational perspective where those kinds of 3 things happen and where -- and where they come 4 from.</p> <p>5 So if -- if that's the answer to who, 6 you know, that's -- that's what I know about -- 7 about the letters and drafting them.</p> <p>8 Q Okay. Sure. So --</p> <p>9 A So if you ask me that question about 10 this particular letter, I would say it is most 11 likely the borrower defense unit and the policy 12 liaison working together collaboratively to 13 bring -- to come together with the draft and then 14 putting it through the staffing process to be seen 15 by the policy element of the Department of 16 Education.</p> <p>17 Q Okay. And do you know if this form is 18 still being used?</p> <p>19 A (Witness reviews document.)</p> <p>20 I don't know if this paper form is 21 still being used, but there is likely a version of 22 this form still being used.</p> <p>23 So if you mean this exact form produced 24 in this exact way, I don't think so. I think that 25 hopefully it's been digitized with the other forms</p>

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<p style="text-align: right;">Page 178 Page</p> <p>1 and being used in that manner.</p> <p>2 Q But is it still going out -- is this</p> <p>3 format of the letter still going out to borrowers?</p> <p>4 Obviously filled in with relevant information for</p> <p>5 the borrower specifically.</p> <p>6 A I -- I believe in general that is true,</p> <p>7 but there -- there may be -- you said format, so</p> <p>8 it doesn't mean it's the exact same letter. But</p> <p>9 if you mean the general format is still continuing</p> <p>10 on today, I don't believe we're sending out</p> <p>11 notifications.</p> <p>12 But if we were sending out</p> <p>13 notifications, if that's your question, would this</p> <p>14 form be in presence. I believe in some form, it</p> <p>15 would be.</p> <p>16 Q Okay. Now could we turn to Exhibit B,</p> <p>17 which is a couple of pages down.</p> <p>18 A Okay.</p> <p>19 Q And this is for current payment</p> <p>20 borrowers who assert the claim other than job</p> <p>21 placement rights -- or other than job placement</p> <p>22 reclaim.</p> <p>23 And if you turn to -- let's see.</p> <p>24 Sorry. If you turn to the bottom of page 2, it</p> <p>25 says, In order to have a successful borrower</p>	<p style="text-align: right;">Page 180 Page</p> <p>1 that common evidence is just that; it is things</p> <p>2 that have been determined, like a program review,</p> <p>3 where a finding was found against the school and</p> <p>4 determined to be validated.</p> <p>5 And, so, it's available for the</p> <p>6 attorney doing the adjudication to use as a source</p> <p>7 of evidence. That could also be Attorney General</p> <p>8 determinations or other determinations made</p> <p>9 against a school where -- where if even if the</p> <p>10 borrower doesn't submit it themselves, it's</p> <p>11 common -- commonly known and available to be</p> <p>12 utilized.</p> <p>13 That's what I believe we -- we mean</p> <p>14 when we use the term.</p> <p>15 Q Okay. And do you know if --</p> <p>16 A I just want to clarify that -- that</p> <p>17 last -- what I just -- what I just said, I'm</p> <p>18 giving you my understanding of it as a lay -- from</p> <p>19 a layman's perspective. That's not something I</p> <p>20 practice against a borrower defense claim because</p> <p>21 I don't do it. So I'm just telling you from a</p> <p>22 layman's perspective and management of borrower</p> <p>23 defense, the team, that's how the attorneys have</p> <p>24 generally explained it.</p> <p>25 Q Right.</p>
<p style="text-align: right;">Page 179 Page</p> <p>1 defense claim based on ED's CCI findings, you must</p> <p>2 have enrolled in one of the covered programs</p> <p>3 during a listed time period.</p> <p>4 So do you -- do you know if it's</p> <p>5 possible for a borrower defense claimant to have a</p> <p>6 successful claim if he enrolled in CCI outside of</p> <p>7 the listed time period?</p> <p>8 A There may be some other form of --</p> <p>9 of -- of damage or concern for the borrower, so</p> <p>10 I -- I wouldn't want to make a blanket statement</p> <p>11 that said there is nothing. I -- I would say it</p> <p>12 just depends on how that attorney would adjudicate</p> <p>13 the claim. I don't -- it depends on the</p> <p>14 circumstances.</p> <p>15 Q Okay. And then if you could turn to</p> <p>16 Exhibit C, and this form is for non-Corinthian</p> <p>17 borrowers who attended a school for which the</p> <p>18 department does not have any common evidence in</p> <p>19 its possession.</p> <p>20 And so do you -- what do you understand</p> <p>21 as -- what is common evidence?</p> <p>22 A As I understand it, and I just want to</p> <p>23 provide the context that I -- I don't adjudicate</p> <p>24 borrower defense cases, so I'm not an attorney.</p> <p>25 But my general understanding of this is</p>	<p style="text-align: right;">Page 181 Page</p> <p>1 And if there's no common evidence, can</p> <p>2 a borrower's claim be granted?</p> <p>3 A So in -- in general and for</p> <p>4 generalities, can it be? I would say every --</p> <p>5 every claim is adjudicated on its own merit as</p> <p>6 stated earlier, and it just depends on what other</p> <p>7 things there are and what other things have been</p> <p>8 brought forth.</p> <p>9 And, so, I would never say it</p> <p>10 absolutely could not be or absolutely could be. I</p> <p>11 could say that every -- every claim is adjudicated</p> <p>12 based on its own merit.</p> <p>13 Q Okay. And do you know whether since</p> <p>14 you've started has any claim been granted for a</p> <p>15 borrower who attended a school for which there is</p> <p>16 no common evidence?</p> <p>17 A I don't know.</p> <p>18 Q Okay. And if we could turn to the last</p> <p>19 form, form D, this form is for non-Corinthian</p> <p>20 borrowers who attended a school for which the</p> <p>21 department does have common evidence.</p> <p>22 Could you tell me when form D was</p> <p>23 developed?</p> <p>24 A I -- I could not tell you exactly when</p> <p>25 it was developed.</p>

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<p style="text-align: right;">Page 182 Page</p> <p>1 Q Do you know roughly when it was 2 developed?</p> <p>3 A I -- I do not. I think it evolved over 4 time in the -- in the BD unit and possibly liaison 5 as circumstances dictated that an additional type 6 of form would be needed.</p> <p>7 Q Okay. And what circumstances dictated 8 that an additional form would be needed?</p> <p>9 A I don't know exactly other -- other 10 than these -- these forms are created based on 11 what is seen in the claims that are being 12 adjusted.</p> <p>13 So if you see a circumstance occur 14 enough and you believe that claimants need to be 15 able to have certain information in order to file 16 a particular claim, you might adjust or make sure 17 you design a form with that in mind.</p> <p>18 Q Okay. And, again, for this form D, who 19 designed the form?</p> <p>20 A So, again, I would say -- I don't know 21 exactly who, other than forms are a collaboration 22 between our liaison office and our borrower 23 defense office. That's how forms are drafted and 24 then approved through our policy element at the 25 Department of Education.</p>	<p style="text-align: right;">Page 184 Page</p> <p>1 which an application was decided would be if it 2 was decided under the 1995 regs?</p> <p>3 A If the appropriate state law?</p> <p>4 Q Yes.</p> <p>5 If -- if a borrower's application was 6 decided according to state law, do you think that 7 law would be stated under the applicable law 8 section?</p> <p>9 A Yeah, that would -- exactly where to 10 put something on the form would not be something 11 I'd be prepared to opine on. Exactly where to put 12 it on the form, I don't know. I would leave it to 13 those in charge with that to -- to tell me --</p> <p>14 Q Okay.</p> <p>15 A -- the laws.</p> <p>16 Q Do you think it would be somewhere on 17 the form?</p> <p>18 A I don't know. I would -- I would look 19 to my attorneys to tell me if state law needed to 20 be on the form or not. And if -- and if they 21 believe that it would be, it would need to then be 22 put through that staffing process I described 23 earlier to make sure those in charge of the forms 24 and policy elements came to an agreement that, in 25 fact, it should be.</p>
<p style="text-align: right;">Page 183 Page</p> <p>1 Q Okay. And did you have to approve this 2 form before it started being used?</p> <p>3 A I don't necessarily approve each form. 4 They go -- they go through the staffing process. 5 The approval of a form is the -- is -- is the 6 policy element of what we do because the forms 7 represent an extension of policy.</p> <p>8 Q Okay. So would you say the denial 9 forms are -- they're under policy?</p> <p>10 MR. HANCOCK: Objection: asked and 11 answered.</p> <p>12 BY MS. TORCHIANA:</p> <p>13 Q Okay. Are the denial forms part of 14 operations?</p> <p>15 A So what I -- what I would say is the 16 drafting of policy forms like the ones that we 17 just went through, A through -- through D, begins 18 inside of Federal Student Aid. 19 So it -- it begins as part of 20 operations, but the final form and the decision on 21 what the form -- that the form is appropriate is a 22 policy decision.</p> <p>23 Q Okay. So if you look at form D, it 24 says, applicable law, and is this somewhere where 25 you would expect the state law standard under</p>	<p style="text-align: right;">Page 185 Page</p> <p>1 Q Okay. And if you -- if you go to the 2 next page, the section it says, What if I do not 3 agree with this decision?</p> <p>4 A Yeah.</p> <p>5 Q And then it says, number three is, 6 Identify and provide any evidence that 7 demonstrates why ED should approve your borrower 8 defense repayment claim. 9 And, you know, you noted actually 10 earlier in your declaration -- and we can turn 11 back to it if you want to see that, but you say 12 that FSA will consider any evidence under 13 reconsideration which includes both new evidence 14 and evidence already submitted. 15 When was the choice made to consider 16 any evidence as opposed to new evidence?</p> <p>17 A So I don't -- I don't know the exact 18 point -- point in time when that became a matter 19 of policy and certainly a matter of our forms. I 20 know that it is today, but exactly how -- how long 21 ago that was determined, I -- I don't know.</p> <p>22 Q Okay. And would you say that was a 23 policy decision?</p> <p>24 A I'm -- I would -- I would say that, 25 those kind of elements on a form, like, time</p>

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<p style="text-align: right;">Page 186 Page</p> <p>1 periods and what's allowed are policy decisions.</p> <p>2 Q Okay. And if a borrower received a</p> <p>3 letter, for instance, where the only reason for</p> <p>4 denial under each allegation was insufficient</p> <p>5 evidence, how would you expect them to reply?</p> <p>6 MR. HANCOCK: Objection: calls for</p> <p>7 speculation.</p> <p>8 THE WITNESS: I'm not -- I'm not</p> <p>9 certain, ma'am, on how they would reply. So for</p> <p>10 an individual, how they would react to that; is</p> <p>11 that what you're asking me?</p> <p>12 BY MS. TORCHIANA:</p> <p>13 Q If they were to submit a request for</p> <p>14 reconsideration but the only thing that their</p> <p>15 denial letter said was insufficient evidence, what</p> <p>16 would you expect them to submit?</p> <p>17 MR. HANCOCK: Objection: calls for</p> <p>18 speculation.</p> <p>19 THE WITNESS: So I don't -- I don't</p> <p>20 believe I'm understanding your question. Are you</p> <p>21 asking me to kind of assume what -- what a</p> <p>22 borrower should do if they get that letter? What</p> <p>23 does a borrower do if they have a question; is</p> <p>24 that -- or -- they don't --</p> <p>25 BY MS. TORCHIANA:</p>	<p style="text-align: right;">Page 188 Page</p> <p>1 don't know -- I can't tell you if any have been</p> <p>2 granted or where those that have come in stand</p> <p>3 right now today.</p> <p>4 Q Okay. And how many have come in</p> <p>5 approximately?</p> <p>6 A I don't know. It's a dynamic process</p> <p>7 where, you know, things come in each day and</p> <p>8 they're sorted out, and at some point when we do</p> <p>9 our next update, if some new have come in, I</p> <p>10 probably would see it visible through our metrics</p> <p>11 or be told, but right now today I couldn't</p> <p>12 speculate on how many would come in.</p> <p>13 Q Okay. When was the last update -- when</p> <p>14 did you receive the last update that had those</p> <p>15 numbers?</p> <p>16 A I believe it was at end-of-November</p> <p>17 time frame.</p> <p>18 Q Okay. And at the end of November, do</p> <p>19 you remember roughly how many requests for</p> <p>20 reconsideration had been received?</p> <p>21 A I do not believe it was that many in</p> <p>22 relative terms, meaning given the number of claims</p> <p>23 that we do. But I don't remember exactly how</p> <p>24 many.</p> <p>25 Q And again, these are -- these are the</p>
<p style="text-align: right;">Page 187 Page</p> <p>1 Q No.</p> <p>2 A -- know what to do or --</p> <p>3 Q We'll get into this more -- we'll get</p> <p>4 into a specific letter later, but -- but here you</p> <p>5 say, Identify and provide any evidence that</p> <p>6 demonstrates why ED should approve your borrower</p> <p>7 defense to repayment claim. And let's say that</p> <p>8 the reason someone got the denial was just</p> <p>9 insufficient evidence.</p> <p>10 How do you think -- what would they put</p> <p>11 in their request for reconsideration?</p> <p>12 MR. HANCOCK: Objection: calls for</p> <p>13 speculation.</p> <p>14 THE WITNESS: I -- I don't know. I</p> <p>15 don't think I can answer your -- I don't think I</p> <p>16 can answer your question.</p> <p>17 BY MS. TORCHIANA:</p> <p>18 Q Okay. Okay. And do you know -- have</p> <p>19 any requests for reconsideration been granted that</p> <p>20 you know of?</p> <p>21 A One second, please.</p> <p>22 (Witness reviews document.)</p> <p>23 I don't know if any have been -- have</p> <p>24 been granted. I only know that some have -- have</p> <p>25 come in through -- through the process. I -- I</p>	<p style="text-align: right;">Page 189 Page</p> <p>1 weekly performance metrics we discussed before,</p> <p>2 correct, that have these numbers?</p> <p>3 A They -- they are the metrics for</p> <p>4 borrower defense, correct.</p> <p>5 MS. TORCHIANA: Okay. And I think I've</p> <p>6 already asked, but I think we will be asking for</p> <p>7 those to be produced.</p> <p>8 BY MS. TORCHIANA:</p> <p>9 Q Okay. Do you know if any requests for</p> <p>10 reconsideration have been denied?</p> <p>11 A As I said earlier, I -- either way, I</p> <p>12 don't know in the process if we have gotten around</p> <p>13 to decisions one way or the other on those yet.</p> <p>14 Q Okay.</p> <p>15 MS. TORCHIANA: Okay. Why don't we</p> <p>16 take a ten-minute break if that's okay with</p> <p>17 everyone.</p> <p>18 THE WITNESS: Okay.</p> <p>19 MR. HANCOCK: That's fine.</p> <p>20 THE VIDEOGRAPHER: Okay. We are now</p> <p>21 going off the record. The time is 20:41 UTC time.</p> <p>22 (Recess -- 3:41 p.m.)</p> <p>23 (After recess -- 3:55 p.m.)</p> <p>24 THE VIDEOGRAPHER: We're now back on</p> <p>25 the record. The time is 20:55 UTC time.</p>

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<p style="text-align: right;">Page 226 Page</p> <p>1           MR. HANCOCK: Objection. It exceeds 2       the scope of discovery.</p> <p>3           THE WITNESS: I don't know, ma'am.</p> <p>4           BY MS. TORCHIANA:</p> <p>5           Q     You don't know.</p> <p>6           Okay. Do you think knowing that 7       information would have been relevant to setting 8       your -- your target metrics for the number of 9       adjudications going out?</p> <p>10          A     Just to be clear, I said I didn't know. 11       I didn't say that there wasn't someone who may 12       have known and may have been a part of that and it 13       may have been a part of the setting and the 14       establishing of metrics.</p> <p>15          But if you are assuming the premise 16       that it wasn't used in that discussion, I can't 17       validate that that premise is correct. I could 18       only say that I don't know. You know, I couldn't 19       tell you which ones were in and which ones were 20       out at that time. I couldn't tell you that the 21       subject matter experts and the technicians and the 22       policy liaison folks and the folks that are inside 23       the bowels of the organization, they may have been 24       familiar with that, and it could have been a part 25       of their deliberations, but I don't know</p>	<p style="text-align: right;">Page 228 Page</p> <p>1           full -- through this full speech. But if you -- 2       by familiar, do you mean if I know when this was 3       given, the title that's up at the top and --</p> <p>4           Q     Were you there?</p> <p>5           A     It's all -- it was a virtual 6       conference.</p> <p>7           Q     Okay. Were you listening -- did you -- 8       did you hear this speech?</p> <p>9           A     I was virtually there. I -- I was -- I 10       was on the -- on the platform, I think would be 11       the way to -- to explain it. And I did the 12       introduction, and I listened while the speech was 13       given.</p> <p>14          Q     Okay.</p> <p>15          A     So if -- if that -- if that is what you 16       mean by am I familiar with it, in that regard, I 17       am. But if -- but if you mean have I read this 18       speech, the script that was provided here in the 19       information that you sent me, then the answer to 20       that is I have not.</p> <p>21          Q     Okay. And could you go to page 3 of 6?</p> <p>22       It's in small -- it's on the bottom right-hand 23       side of the page.</p> <p>24          A     Yes, ma'am.</p> <p>25          Q     And could you read me the paragraph</p>
<p style="text-align: right;">Page 227 Page</p> <p>1       personally.</p> <p>2           Q     Okay. And that 150,000 number of 3       targeted adjudications for borrower defense 4       applications, by adjudications, is that decisions 5       that have been processed and sent to borrowers, or 6       what do you consider an adjudicated decision that 7       counts towards that 150,000?</p> <p>8           A     So when I look at the metric, I take a 9       holistic look at it. And so to get a check in 10       that column, I'm looking for the full circle, 11       which is what we have called today Step 1 and Step 12       2, to have been completed.</p> <p>13          Q     Okay. Okay. I have a couple more 14       things to go over, and then -- so -- so could you 15       turn to tab 33?</p> <p>16          MS. TORCHIANA: And could we mark that 17       as Exhibit 30?</p> <p>18       (Deposition Exhibit 30 was marked for 19       identification and attached to the transcript.)</p> <p>20          BY MS. TORCHIANA:</p> <p>21          Q     And are you familiar with this speech 22       by Secretary DeVos?</p> <p>23          A     (Witness reviews document.)</p> <p>24          I'm familiar with the event. The --</p> <p>25          the speech itself, I have not read through this</p>	<p style="text-align: right;">Page 229 Page</p> <p>1       that starts with, Still more advance?</p> <p>2          A     Still more advance the truly insidious 3       notion of government gift giving. We've heard 4       shrill calls to cancel, to forgive, to make it all 5       free. Any innocuous label out there can't 6       obfuscate what it really is: wrong.</p> <p>7          Q     Okay. And what do you -- what did you 8       understand this to mean, or what do you understand 9       this to mean?</p> <p>10          MR. HANCOCK: Objection: exceeds the 11       scope of discovery. What's the relevance of this 12       to the court's three categories?</p> <p>13          BY MS. TORCHIANA:</p> <p>14          Q     You can still answer.</p> <p>15          A     You're asking me what do I believe that 16       statement is?</p> <p>17          Q     Yeah, what do you understand this 18       statement to mean.</p> <p>19          MR. HANCOCK: Calls for speculation.</p> <p>20          THE WITNESS: I am -- can you give me a 21       second to read it again?</p> <p>22          BY MS. TORCHIANA:</p> <p>23          Q     Yeah.</p> <p>24          A     (Witness reviews document.)</p> <p>25          I don't know what it means. It was --</p>

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<p>1        it was obviously written by a speechwriter. Those      2        are not -- those are not terms I use. I don't --      3        I don't know what it means.      4        Q      Okay. And -- sure.      5                And have you ever heard Ms. DeVos in      6        your private meetings with her express these same      7        sentiments?</p> <p>8                MR. HANCOCK: Object to the scope of      9        discovery, and I'm going to instruct the witness      10      not to answer.</p> <p>11         MS. TORCHIANA: Okay. Could -- could      12      we go off the record?</p> <p>13         MR. HANCOCK: Sure.</p> <p>14         MS. TORCHIANA: I think that's      15      exactly --</p> <p>16         THE COURT REPORTER: Wait, wait, wait.      17      Wait a minute. Wait a minute. You're not off.      18      He's got to read you off.</p> <p>19         MS. TORCHIANA: I'm sorry.</p> <p>20         THE COURT REPORTER: That's okay.</p> <p>21         THE VIDEOGRAPHER: We're going off the      22      record; right?</p> <p>23         THE COURT REPORTER: Yes.</p> <p>24         MS. TORCHIANA: It seems to be --</p> <p>25         THE COURT REPORTER: Yes.</p>	<p>1                THE WITNESS: Yes.      2                BY MS. TORCHIANA:      3                Q      Okay. And are you familiar with this      4        PowerPoint? Have you seen it before?      5                A      (Witness reviews document.)      6                So, ma'am, I believe I have seen it      7        before.      8                Q      Okay. So when did you see it?      9                A      I cannot -- I cannot tell you when, but      10      I believe in some of our staff at work and our      11      updates, I have seen these charts before.      12                Q      Okay. And in what context would you      13      have seen it?      14                A      Updates from the borrower defense team,      15      preparing for updates, those kinds of things.      16                Q      Okay. And did you receive regular      17      updates from the borrower defense team?      18                A      So I don't know. I would say the      19      updates from the borrower defense team I receive      20      vary, as I stated earlier. It just depends on      21      what's going on, you know, what needs to be      22      discussed, and I'm not sure if you would consider      23      that regular or not.      24                Q      Okay. And this presentation is from      25      August 21st, 2019. And if you turn to page 2, it</p>
<p>1                Wait a minute.      2         MS. TORCHIANA: -- relevant --      3         THE COURT REPORTER: Wait a minute.      4         MS. TORCHIANA: -- to point --      5         THE COURT REPORTER: No. He asked the      6      question.      7                Dan, yes, please take us off the      8      record.      9         THE VIDEOGRAPHER: Thank you. We're      10      now off the record at ten -- 23:07 UTC.      11                (Recess -- 5:07 p.m.)      12                (After recess -- 5:09 p.m.)      13         THE VIDEOGRAPHER: We're now back on      14      the record. The time is 22:09 UTC time.      15         BY MS. TORCHIANA:      16         Q      Okay. And, so, Mr. Brown, are you --      17      are you declining to answer what you think this      18      sentence means?      19         A      The answer is I don't know.      20         Q      You -- you don't know. Okay.      21                Okay. Let's move on. Let's go to our      22      final exhibit, and then we'll be done.      23                Could you turn to Exhibit -- let's      24      see -- Exhibit 12?      25                (Exhibit 12 referred to.)</p>	<p>1                says, Total borrower defense applications as of      2      the week ending August 6th, 2019.      3                Do you know whether these presentations      4      were given weekly or . . .      5                A      (Witness reviews document.)      6                No, I can't tell you that they were      7      given weekly.      8                Q      Okay. And were you -- was this      9      presentation given to you, or in what context did      10     you see this PowerPoint?      11                A      Because these -- because I have seen, I      12      think, most of these slides at different times and      13      perhaps some more than once over time. Your      14      particular question of when was this presentation      15      given to me, I don't -- I don't know that date. I      16      just can say for sure that I have seen the slides      17      that you are talking about.      18                Q      Okay.      19                A      It's not all at the same time is my      20      point. Different things, different types,      21      different updates.      22                Q      Okay. And the second line says, 38,700      23      applications have been adjudicated but not yet      24      processed.      25                As -- as we've been describing it,</p>